

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA)
)
 v.) CIVIL ACTION NO. 2:05cv1178-WKW
) WO
HORACE MILTON BLACK)

ORDER

In April 2005, the movant, HORACE MILTON BLACK [“Black”], pleaded guilty to *armed bank robbery* and was sentenced to 140 months’ imprisonment.¹ In a 28 U.S.C. § 2255 motion filed on December 1, 2005 (Doc. # 1), Black claims, *inter alia*, that his counsel was ineffective for failing to file an appeal on his behalf.² After considering the submissions pertinent to this issue, the Magistrate Judge determines, pursuant to *Rule 8, Rules Governing Section 2255 Proceedings for the United States District Court*, that an evidentiary hearing is required for resolution of this issue.

Accordingly, it is **ORDERED** as follows:

1. Pursuant to Rule 8(c), **the Federal Defender is hereby appointed** to represent Black, who is eligible for the appointment of counsel pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A, in connection with further proceedings on the § 2255 motion.³

2. Counsel shall confer expeditiously with Black regarding (a) the issue specified for an

¹*See Judgment in a Criminal Case* (Doc. # 43 in Case No. 2:04cr169-WHA).

²Black contends that he requested his attorney, Terry R. Smyly, to file a direct appeal on his behalf, but that Smyly failed to do so. *See § 2255 Mot.* (Doc. #1) at 5; *Affidavit of Black* (Doc. # 12) at 1-2. Smyly responds, in part, that Black “specifically advised [him] that he did not want to appeal.” *See Affidavit of Smyly* (Doc. # 3).

³The Federal Defender should forthwith ascertain the existence of any conflict of interest in representing Black, and if a conflict of interest exists, should notify this court and move for appointment of a CJA Panel Attorney to represent Black with respect to this case.

evidentiary hearing, and (b) additional claims asserted in his amended pleadings (Docs. # 7 & # 15).

3. **On or before May 26, 2006**, counsel shall file a final statement of the claims which will be pursued in this § 2255 motion, and counsel shall identify clearly any additional claims requiring an evidentiary hearing. *Counsel is instructed to serve the statement on the United States Attorney and on trial counsel, Terry R. Smyly.*

Atty. Smyly shall file not later than June 21, 2006, an affidavit which addresses any claims of ineffective assistance of counsel presented against him in Black's final statement of § 2255 claims, and he shall also furnish the United States Attorney and counsel for Black with copies of his affidavit.

The United States Attorney is instructed to file a response to Black's final statement of § 2255 claims not later than June 30, 2006.

4. This case is set for a **scheduling conference with counsel at 11:30 a.m. on July 13, 2006**, to narrow the issues for evidentiary hearing and to schedule the hearing.

5. The Clerk is DIRECTED to serve this Order promptly upon the Federal Defender and to make the case file available as reasonably requested. The Federal Defender shall file a notice of appearance pursuant to this limited-purpose appointment.

DONE this 17th day of March, 2006.

/s/ Delores R. Boyd
DELORES R. BOYD
UNITED STATES MAGISTRATE JUDGE